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C O N F I D E N T I A L SECTION 01 OF 02 CANBERRA 000865

SIPDIS

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TAGS: [PREL](#) [PGOV](#) [EAID](#) [AS](#) [PP](#)

SUBJECT: AUSTRALIA PULLS POLICE FROM PNG: ECP IN DANGER

REF: A. PORT MORESBY 217

[1](#)B. PORT MORESBY 219

[1](#)C. PORT MORESBY 167

[1](#)D. USDAO CANBERRA 190042Z MAY 05

Classified By: Political Counselor Woo Lee for reasons 1.4 (b) and (d).

[1](#)1. (C) SUMMARY: On May 16 the GOA decided to withdraw Australian Federal Police (AFP) forces deployed in Papua New Guinea (PNG) as a result of the May 13 ruling by PNG's Supreme Court which overruled the legal immunity given to Australian police and bureaucrats under the Enhanced Cooperation Program (ECP) (ref A). Australia remains committed to finding a resolution to the impasse but will not return the AFP to PNG without legal immunity assurances. The process of resolving these legal issues, which could require the GPNG to enact legislation or change the constitution, is likely to be a lengthy one. End Summary.

[1](#)2. (C) According to Australian Department of Foreign Affairs and Trade (DFAT) officials, who briefed us on May 18, the PNG Supreme Court ruling basically meant that the AFP had no legal right to exercise police authority in PNG. The court had decreed that the ECP command structure making AFP forces ultimately responsible to the Australian AFP Commissioner in Canberra contravened the PNG Police Commissioner's powers, and was thus unconstitutional. The ruling also stated that it was unconstitutional for the AFP to be outside the PNG Government's jurisdiction, and thus AFP legal immunity was overruled. All but ten of the AFP were withdrawn on May 17; the ten remaining on the ground in Port Moresby were handling final arrangements. The GOA had deployed 154 of the 210 planned police to PNG under the five-year, A\$1.1 billion (US\$880 million) ECP. Forty-three of the 64 planned Australian civilian bureaucrats serving in PNG government departments will remain in place despite their new exposure to PNG's legal jurisdiction, said DFAT officials (ref B). The GOA instructed those bureaucrats in decision-making positions to change their actions to reflect an advisory rather than a functional role in order to protect themselves from criminal prosecution.

[1](#)3. (U) In a May 16 interview with the press, Foreign Minister Downer stated, "The risks involved for (the AFP), being on the ground without the appropriate legal cover, are such that we'd rather have them back in Australia, and there be no risks." Downer had said previously in another interview on May 13, the day of the ruling, that the GOA had to stand down the AFP contingent in PNG and that the ruling was a setback for the ECP, although Australia would remain committed to the program.

[1](#)4. (C) The PNG Cabinet was to meet May 18 to discuss the ruling and how to proceed. FM Downer has invited the PNG FM to Australia to discuss a resolution but no date has been set. DFAT officials added that the GOA will not back down on the immunity issue and will only reengage when such assurances are offered. Otherwise, the level of exposure to criminal prosecution in PNG would be too great. Remaining Australian bureaucrats are subject to such prosecution currently and retroactively, based on the Court ruling. DFAT officials told us that PNG wanted the AFP to remain in Bougainville to help with the upcoming election. However, only three AFP officers remain in Bougainville in an advisory role as part of a separate community policing program. Australian press reports indicate that PNG may ask New Zealand to send some of its police forces to assist with the election.

A Bad Season for Australian-PNG Ties

[1](#)5. (U) The court decision stating that the ECP command structure and jurisdiction arrangements violated the PNG's constitution comes on the tail of other setbacks in the Australian-PNG bilateral relationship. According to Australian press reports, in Port Moresby at a May 4 police union meeting, 300 PNG police demanded that the AFP return to Australia. The police claimed that crime had risen since Australian forces arrived, but Commander Barry Turner, head of the Australian police contingent in PNG, told the press that crime figures had only gone up because more offenses had been reported by members of the public who now had greater confidence that action would be taken. There was also a diplomatic storm in March involving Australian Customs officers in Brisbane airport who infuriated PNG PM Michael

Somare when they asked him to remove his shoes as part of a routine security inspection (ref C). The PNG PM demanded an apology and suggested that the future of the ECP was threatened if he did not receive one. (NOTE: We are not aware of any allegations that Somare influenced the Supreme Court ruling. End Note.)

16. (C) DFAT officials did not want to speculate about the long-term effects of the ruling, but Australian Defence officials were pessimistic about the survival of the ECP (ref D). Both departments, however, emphasized that the GOA has too much of a stake in PNG to let the ECP fail completely. First Assistant Secretary for the South Pacific David Ritchie told visiting EAP Assistant Secretary Hill on May 17 that Australia had no choice but to continue to engage with Port Moresby and could not let the country "go down the gurgler" given PNG's proximity and 5.5 million population (septel).

17. (C) COMMENT: The withdrawal of AFP forces from PNG marks a dramatic downturn in the bilateral relationship and is a potentially fatal setback for the ECP, especially if new legal assurances cannot be negotiated quickly. The GOA has stated their police will not return unless legal immunity is restored. The constitutional and legal changes required of the PNG government to achieve that end could take a year or more to come to fruition. If an agreement cannot be reached and the ECP erodes further, it could have far-ranging effects for Australia's other aid programs in the region, such as the Regional Assistance Mission to the Solomon Islands (RAMSI). Australian press speculation indicated that unsavory political elements in some Pacific nations, who are hampered by the accountability Australian aid mandates, might follow the lead of PNG and rebel in their own way against Australia's presence in their respective countries. End Comment.

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